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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/812,645

03/20/2001

William Robert Collett

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1141

117 7590 12/03/2003

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EXAMINER

WALLS, DIONNE A

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/812,645	COLLETT ET AL.	
	Examiner	Art Unit	
	Dionne A. Walls	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-43, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-43 and 45-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26, 28-30, 33, 43, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Prior Art and JP 11-113553.

JP 6-70740 discloses a commercial cigarette case (11) which appears, from Fig. 3, to resemble a cigarette package and to be designed to hold twenty-five cigarettes, but which actually holds twenty cigarettes since a fire-extinguishing section (14) having a fire-extinguishing cylinder (21) is positioned inside said package which appears to take the space of about five cigarettes (see English translation and figures). While there may be no clear indication that the case of JP 6-70740 is a paperboard crush-proof box designed to hold twenty-five cigarettes, Applicant admits, in the instant specification, on page 1 and 10, that one type of popular cigarette package is the "crush proof box" – which is manufactured from resilient paperboard, and that typical crush-proof boxes are designed to include twenty-five cigarettes. It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the case of JP 6-70740 of crush-proof paperboard, designed to hold twenty-five cigarettes, since commercial cigarette packages constructed with paperboard material (and designed to be crush-resistant and hold twenty-five cigarettes), are well-known in the art, as admitted by

Applicant. Further, while JP 6-70740 modified by Applicant's Admitted Art may not specifically show each cigarette being in contact with at least one adjacent cigarette, JP 11-113553 shows a cigarette package with cigarette butt holder wherein the cigarettes are positioned in the package such that each cigarette is in contact with the cigarettes adjacent to each said cigarette (see fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to arrange the cigarette package of JP 6-70740 modified by Applicant's Admitted Art in such manner as shown in JP 11-113553 since arrangement of cigarettes in a cigarette butt saver/extinguisher is known in the tobacco art – as disclosed in this reference.

3. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Prior Art and JP 11-113553, further in view of Windesheim (US. Pat. No. 1,928,041).

While there may be no explicit disclosure in JP 6-70740 that the opening for receiving cigarettes into the channel is elliptical, Windesheim discloses an extinguishing device (10) which has an elliptically-shaped opening through which cigarettes are received to be snuffed (see fig. 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the opening of the fire-extinguishing cylinder such that it is elliptically-shaped, since such shape for a cigarette extinguisher is known – as evidenced by the Windesheim disclosure.

4. Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Prior Art and JP 11-113553, further in view of Gilbert et al (US. Pat. No. 4,886,076).

While JP 6-70740 may not disclose that the fire-extinguishing cylinder is fabricated from plastic or metal, Gilbert et al discloses a cigarette snuffer, which can be fabricated from plastic or metal (see col. 1, lines 53-54). It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the fire-extinguishing cylinder of metal or plastic since such materials are known to be the materials of construction of cigarette snuffers as evidenced by the Gilbert et al disclosure.

5. Claims 34, 36-38, 41-42, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Art and JP 11-113553, as applied in claim 26, further in view of JP 6-46822.

These claims differ from JP 6-70740 modified by Applicant's Admitted Art and JP 11-113553 because of language that states that the cigarette package is designed to hold twenty-three cigarettes; however, it follows that if the cigarette packet of JP 6-70740 modified by Applicant's Admitted Art is designed to hold twenty-five cigarettes, it would also, obviously, be designed to hold twenty-three cigarettes. Also, since there is no teaching that the fire-extinguishing cylinder/section of JP 6-70740 is collapsible or foldable, it follows that said cylinder/section is "rigid". Further, while there may be no teaching that the cigarette package of the combined references has a fire-extinguishing section that corresponds to the cross-sectional area of three cigarettes, JP 6-46822 discloses such a cigarette package (see fig. 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cigarette package of JP 6-70740 and Applicant's Admitted Art by substituting the fire-

extinguishing section, which occupies the space of five cigarettes, with a fire-extinguishing section that occupies the space of three cigarettes, as taught in JP 6-46822, in order to have extra room for the storage of more cigarettes prior to smoking.

6. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Art, JP 11-113553 and JP 6-46822 as applied to claim 34 above, and further in view of Windesheim (US. Pat. No. 1,928,041).

While there may be no explicit disclosure in device of the combined references the opening for receiving cigarettes into the fire-extinguishing cylinder is elliptical, Windesheim discloses an extinguishing device (10) which has an elliptically-shaped opening through which cigarettes are received to be snuffed (see fig. 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the opening of the fire-extinguishing cylinder such that it is elliptically-shaped, since such shape for a cigarette extinguisher is known – as evidenced by the Windesheim disclosure.

7. Claims 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-70740 in view of Applicant's Admitted Art, JP 11-113553 and JP 6-46822 as applied to claim 34 above, and further in view of Gilbert et al (US. Pat. No. 4,886,076).

While combined references may not disclose that the fire-extinguishing cylinder is fabricated from plastic or metal, Gilbert et al discloses a cigarette snuffer, which can be fabricated from plastic or metal (see col. 1, lines 53-54). It would have been obvious to one having ordinary skill in the art at the time of the invention to fabricate the fire-extinguishing cylinder of metal or plastic since such materials are known to be the

materials of construction of cigarette snuffers as evidenced by the Gilbert et al disclosure.

Response to Arguments

8. Applicant's arguments, for the most part, with respect to claims 26-43 and 45-46 have been considered but are moot in view of the new ground(s) of rejection resulting from amendments to the claims. The remaining arguments are deemed to have been adequately addressed in the above rejections over the prior art.

- Applicant argues that JP 6-70740 does not teach or suggest a crush-proof paperboard box designed to hold twenty-five cigarettes because said reference teaches the use of a housing part 13 for housing plural cigarettes and includes a detachable bottom lid, and that such housing part appears to be a necessity and to require more space than is required to hold twenty cigarettes. However, the Examiner admits that JP 6-70740 does not teach a crush-proof paperboard box, which is the reason for incorporating the teaching from Applicant's Admitted Art that states that such type of cigarette box is conventionally used in the cigarette art. Therefore, one having ordinary skill in the art would have been motivated to construct the cigarette box of JP 6-70740 in the form of a crush-proof, paperboard box.

Conclusion

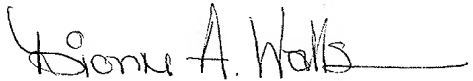
9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.


Dionne A. Walls
Primary Examiner
Art Unit 1731

December 1, 2003